IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22842 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE & 1 - Petitioner(s)
Versus
RAMDEVSINH MADHUBHAI CHUDASAMA - Respondent(s)

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Appearance :
Ms. Asmita Patel, Assistant GOVERNMENT PLEADER for the Petitioners.
MR LR PATHAN for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 13/12/2007

ORAL JUDGMENT

The present Special Civil Application has been preferred against the order dated 30th August, 1999 below Exh. 5 in Regular Civil Suit no. 135 of 1999 passed by the Civil Judge (C.D.), Bhavnagar as

well as against the order dated 1st March, 2007 in Miscellaneous Civil Appeal No. 183 of 1999 passed by the Additional District Judge, Bhavnagar, whereby the appeal preferred by the present petitioners has been dismissed. Thus, the original defendants have preferred the present Special Civil Application.

2. Having heard the learned advocates for both the sides and looking to the facts and circumstances of the case, the impugned orders passed by both the courts below are hereby quashed and set aside mainly for the following facts and reasons:

(i) It prima facie, appears from the facts of the case that the present respondent (original plaintiff) was initially suspended for receiving illegal gratification and a criminal case was instituted against him under Prevention of Corruption Act, 1988. The original plaintiff was serving in the Police Department. Criminal case was filed, investigated, charge-sheet was filed, evidence was recorded and ultimately he was convicted by the Sessions Court and he was ordered to undergo imprisonment for six months and pay a fine of Rs. 1000/-.

(ii) It also appears from the facts of the case that the present respondent was convicted for the offences punishable under sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 on 31st March, 1999 and was suspended with effect from 12th

August, 1996. But as suspension was continued for a longer period, he was getting suspension allowance at the rate of 75% and ultimately during the pendency of the criminal case, he was taken in service. But after, conviction, as it appears from the facts of the case, that a civil suit was instituted as stated hereinabove and it was prayed by the respondent (original plaintiff) that even after conviction under Prevention of Corruption Act, 1988, the State Government should continue him in service as an appeal has been preferred before appellate forum. Now, Appeal is preferred and stay has been granted and therefore, the State Government cannot even suspend the present respondent (original plaintiff) and whatever is prayed before the trial court below exh. 5 has been granted by the trial court. It ought to have been appreciated by the trial court that standards under Civil Law for proving misconduct and standards for proving an offence under Criminal Jurisprudence are absolutely different. The offences are to be proved beyond reasonable doubt, whereas civil misconduct has got a different standard of evidence, based on preponderance of probability. In this type of cases, when there is a clear charge of corruption and that too, when it is already proved before the Sessions Court, the stay as prayed for below exh. 5 (i.e. plaintiff cannot be suspended or his services cannot be terminated or no compulsory retirement can be given to him) cannot be granted. This aspect of the matter has not been appreciated by the trial court as well as by the lower appellate

court. This is an error on the face of the record. Pendency of an appeal on criminal side may not even be useful to the original plaintiff. Looking to the facts and circumstances of the case, there is no prima facie case in favour of the original plaintiff when there is an already conviction by competent Sessions Court. Balance of convenience is also not in favour of the original plaintiff. No irreparable loss will be caused to the plaintiff if the stay as prayed for is not granted. On the contrary, if the stay is granted, it will cause an irreparable loss to the present petitioners (original defendants).

(iii) Trial Court has lost sight of the fact that even if criminal proceedings are pending, departmental proceedings can be initiated. Here is already a conviction. Therefore, stay ought not to have been granted by the trial court. It has been held by the Hon'ble Supreme Court in the case of **Hindustan Petroleum Corporation Ltd. and others vs. Sarvesh Berry reported in AIR 2005, SC, 1406, in paragraphs 12 and 13 as under:**

> "12. It is to be noted that in cases involving Section 13(1)(e) of P.C.Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression "known sources of income" is related to the sources known to the authorities and not the accused. The Explanation to Section 13(1) of the P.C.Act provides that for the purposes of the Section " known sources of income" means income derived from any lawful source and such receipt has been intimated in

> accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets were acquired and from what sources of income is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally issues covered by charges 2 and 3 cannot be the subject matter of adjudication in the criminal case.
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> 13. That being the position, the High Court was not justified in directing stay of the departmental proceedings pending conclusion of the criminal charge. As noted in Capt. M.Paul Anthony's case (supra) where there is delay in the disposal of a criminal case the departmental proceedings can be proceeded with so that the conclusion can be arrived at an early date. If ultimately the employee is found not guilty his honour may be vindicated and in case he is found guilty the employer may get rid of him at the earliest." (Emphasis supplied).

Likewise, it has been held by the Hon'ble Supreme Court in the case of **Kendriya Vidyalaya Sangathan and others vs. T.Srinivas reported in AIR 2004 SC, 4127, especially in paragraphs 12 and 14** as under:

> "12. In the instant case, from the order of the Tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the Tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial

in regard to the same misconduct is pending. Neither the Tribunal nor the High Court did take into consideration the seriousness of the charges which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The Court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the Tribunal fell in error in staying the disciplinary proceedings.

14. As stated above, in the case in hand, both the Tribunal and the High Court proceeded as if a departmental enquiry and a criminal trial could not proceed simultaneously, hence, they stayed the departmental enquiry which by itself, in our opinion, is contrary to the principles laid down in the above cited cases." (Emphasis supplied)

3. In view of the above facts and reasons, this petition is allowed. The order dated 30th August, 1999 below Exh. 5 in Regular Civil Suit no. 135 of 1999 passed by the Civil Judge (C.D.), Bhavnagar as

well as against the order dated 1st March, 2007 in Miscellaneous Civil Appeal No. 183 of 1999 passed by the Additional District Judge, Bhavnagar, are hereby quashed and set aside. The stay granted by the trial court below exh. 5 as well confirmed by the lower appellate court in favour of the respondent (original plaintiff) is hereby vacated. Exh. 5 application in Suit no.135 of 1999 is dismissed. Trial Court is directed to conduct the trial on day to day basis so as to complete the same as early as possible and practicable but not later than 30th April, 2008. Rule made absolute accordingly with no order as to cost.

(D.N.Patel,J)

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